

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE: * **CASE NO. 18-02081 (MCF)**
SONIA I ROMAN GARAY *
Debtor(s) * **CHAPTER 13**

MOTION OBJECTING PLAN

TO THE HONORABLE COURT:

COMES NOW, ***COOPERATIVA DE AHORRO Y CREDITO CAGUAS***, hereinafter Cooperativa, through its undersigned attorneys and very respectfully to states and prays:

1. On April 18, 2018, Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code.
2. On April 30th, 2018, Cooperativa, a secured creditor holding a duly registered Conditional Sales Contract over a 2012, Nissan Rogue, serial number JN8AS5MT9CW254182, property of Debtor's estate, filed a secured claim for the amount of \$6,453.03, bearing interest at the rate of 10.95% per annum until full and complete payment. See: Claims Register, Claim No. 1.
3. Debtor's Chapter 13 plan dated April 18, 2018, (Docket Entry no. 3), does not provide for pre-confirmation adequate protection monthly payments for Cooperativa's secured claim. Therefore, the plan fails to comply with sections 1325 (a) (5) and 1326 (a)(1)(C) of the Bankruptcy Code.
4. Section 1325 (a) (5) states as follows:

“... (a) Except as provided in subsection (b), the court shall confirm a plan

if-...

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B) (i) the plan provides that

(I) the holder of such claim retain the lien securing such claim until the earlier of—

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and;

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan...”.

5. *In re Butler*, 403 B.R. 5, (Bankr. D. Ariz. 2009) indicates that pursuant to section 1326 (a)(1)(C), “...debtor must pay adequate protection to a creditor holding an allowed secured claim secured by personal property beginning 30 days after the order of relief. *Second, the debtor must propose a plan that provides for equal monthly payments to that secured creditor.* Those proposed plan payments to that secured creditor cannot be less than an amount sufficient to provide adequate protection to the creditor during the period of the plan...”. The purpose of section 1325 (a)(5)(B)(iii)(II) “...is to make sure that creditors whose claims secured by personal property remain adequately protected during the period of the plan or until the creditor’s claim is paid in full...” .

6. Debtor’s plan does not comply with sections 1325 (a)(5)(B)(iii)(II) and 1326 (a)(1)(C) since it fails to provide for pre-confirmation adequate protection payments of

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Cooperativa's secured claim as established in the duly recorded Conditional Sales Contract.

WHEREFORE, Cooperativa respectfully requests this Motion be granted denying confirmation of Debtor's Chapter 13 Plan, and that an Order be entered accordingly.

RESPECTFULLY SUBMITTED

CERTIFICATE OF MAILING: I certify that on this same date I have notified a true copy of the foregoing motion to CM/ECF participants: ***Roberto Figueroa Carrasquillo, Esq.; Alejandro Oliveras Rivera, Chapter 13 Trustee***; and to non CM/ECF participants, through First Class, U.S. Mail, ***Debtor*** at HC 03 Box 37916, Canovanas, PR 00725.

In San Juan, Puerto Rico, this 4th day of May, 2018.

/s/ **CARLOS A. QUILICHINI PAZ**
USDC-PR 120906
JESSICA M. QUILICHINI ORTIZ
USDC-PR 223803
Attorneys for Cooperativa
P.O. Box 9020895
San Juan, PR 00902-0895
Phone 787-729-1720
Fax 787-724-6000
quilichinipazc@microjuirs.com